

Appl. No. : 10/661,139
Filed : September 12, 2003

REMARKS

Applicants thank the Examiner for the indication of allowable subject matter. Claims 1, 5, 6, 8, 10 and 12 have been amended to correct formal matters, remove redundant language or bring the claims into compliance with US practice rules. Claims 13, 20 and 23 have been amended to depend from Claim 1. Claims 16-17 and 27-28 have been amended to add "or salt thereof" after "the compound." The amendments do not constitute addition of new matter.

Furthermore, as requested, Claims 38-41 have been cancelled as being directed to non-elected subject matter. Applicants reserve the right to file a divisional application on the non-elected subject matter. As a result, Claims 1-3, 5-37 and 42-43 are currently pending.

Rejoinder

In the Amendment filed on January 9, 2006, an election was made without traverse to prosecute the invention of Group I, Claims 1-12 and 34-41. In the Office Action of March 1, 2006, the Examiner further limited the scope of claims to encompass only compounds of Genera I-IV. Accordingly, Group II, including Claims 13-19, which are directed to a method for treating or preventing allergic reaction and/or inhibiting cytokines or leukocytes comprising administration of a compound of genera I-VIII, Group III, including Claims 20-22, which are directed to a method for treating or preventing asthma comprising administration of a compound of genera I-VIII, and Group IV, including Claims 23-33, which are directed to a method for inhibiting cellular proliferation comprising administration of a compound of genera I-VIII, were withdrawn from consideration. Compounds of Genera V-VIII were also withdrawn from further consideration pursuant to 37 C.F.R. 1.142(b) as being drawn to non-elected inventions.

According to M.P.E.P. 821.04, where product and process claims drawn to independent and distinct inventions are presented in the same application, Applicant may be called upon under 35 U.S.C. § 121 to elect claims to either the product or process. The claims to the non-elected invention will be withdrawn from further consideration under 37 C.F.R. § 1.142. However, if Applicant elects claims directed to the product and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

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The Applicants request rejoinder of Claims 13-33 and 42-43, in accordance with M.P.E.P. 821.04. Independent Claims 13, 20 and 23 have been amended to depend from Claim 1. Thus, all of Claims 13-33 now depend from Claim 1 and recited all of the limitations of the allowed product claims.

Improperly Withdrawn Subject Matter

Applicants had previously added new Claims 42 and 43 that are directed to pharmaceutical compositions comprising one or more of compounds or salts thereof of Claim 1. However, Applicants respectfully suggest that these claims were improperly withdrawn. Claims 42 and 43 recite subject matter encompassed squarely within the elected Group—as further narrowed to encompass only compounds of Genera I-IV. Claims 42 and 43 depend from Claim 1. Accordingly, they are deemed properly allowable as they recite all of the limitations of allowed Claim 1, plus additional limitations related to the pharmaceutical compositions. Accordingly, Applicants respectfully request the Examiner to allow these claims.

Allowable Subject Matter

Applicants have amended Claims 1, 6, 8, 10 and 12 as suggested to make the language more clear. Applicants have cancelled Claims 38-41 as being directed to non-elected genera V, VI, VII and VIII. Therefore, Applicants respectfully request the Examiner to allow all of the pending claims.

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CONCLUSION

In view of the foregoing amendments and comments, it is respectfully submitted that the present application is fully in condition for allowance, and such action is earnestly solicited.

The undersigned has made a good faith effort to respond to all of the objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the undersigned in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

9/27/06

By: _____

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